

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

MAE ELIZABETH SIMMONS,  
Plaintiff-Appellant,

v.

DONNA E. SHALALA, SECRETARY OF  
HEALTH AND HUMAN SERVICES; MARY  
ROSE LYNCH, Administrative Officer,  
Division of Extramural Activities,

No. 96-2838

Alcohol, Drug Abuse and Mental  
Health Administration, National  
Institutes of Health; HUGH STAMPER,  
Director, Division of Extramural  
Activities, Alcohol, Drug Abuse and  
Mental Health Administration,  
National Institutes of Health,  
Defendants-Appellees.

Appeal from the United States District Court  
for the District of Maryland, at Baltimore.  
William M. Nickerson, District Judge.  
(CA-96-1472)

Submitted: April 17, 1997

Decided: April 30, 1997

Before NIEMEYER and WILLIAMS, Circuit Judges, and  
BUTZNER, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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## COUNSEL

Mae Elizabeth Simmons, Appellant Pro Se. S. Hollis Fleischer, Assistant United States Attorney, Allen F. Loucks, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellees.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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## OPINION

### PER CURIAM:

Mae Elizabeth Simmons appeals from the district court's order granting dismissal of the individual Defendants, and summary judgment in favor of Defendant Donna Shalala, Secretary of Health and Human Services, and dismissing Simmons' employment discrimination action alleging violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. § 2000e-16 (West 1994), based on her race.

Our review of the record and the district court's opinion discloses that this appeal is without merit. First, the district court's dismissal of the individual federal Defendants was proper. See Ellis v. United States Postal Serv., 784 F.2d 835, 838 (7th Cir. 1986); see also Birbeck v. Marvel Lighting Corp., 30 F.3d 507, 510-11 (4th Cir. 1994) (as to ADEA claims). Second, Simmons failed to establish a prima facie case of employment discrimination. See O'Connor v. Consolidated Coin Caterers Corp., \_\_\_ U.S. \_\_\_, 64 U.S.L.W. 4243 (U.S. Apr. 1, 1996) (No. 95-354); see also McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973); Alvarado v. Board of Trustees, 928 F.2d 118, 121 (4th Cir. 1991). Moreover, Simmons failed to rebut the legitimate, nondiscriminatory reasons the employer proffered to support its decisions to discipline and ultimately terminate her. See Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 254-56

(1981); Conkwright v. Westinghouse Elec. Corp., 933 F.2d 231, 234-35 (4th Cir. 1991). Accordingly, we cannot say that the district court's finding of non-discrimination was clearly erroneous. Anderson v. City of Bessemer, 470 U.S. 564, 574 (1985). As for Simmons' claim of retaliation, we agree with the district court's conclusion and reasoning. Simmons v. Shalala, Secretary of Health and Human Services, No. CA-96-1472 (D. Md. Nov. 27, 1996).

We therefore affirm the district court's dismissal of this action. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED